" Fortunately I can obtain some guidance as regards the expression "necessary" from the judgment of Mr. Justice Knight in a very recent case where he interpreted the expression as meaning "essential" and something that was required in the interests of public health or town improvement. It seems to me it is correct to interpret this particular provision (section 15(1)(k)) as providing that if at the present time these premises are sub-standard from the point of view of public health or from the point of view of town planning and lay out and will remain sub-standard and unless and until some alteration such as is suggested is made, then the alteration should be made in order to bring the property up to a proper standard."

There is no doubt that the learned Chief Justice made a mistake when he said in his oral judgment that Knight J. interpreted the expression "necessary" as meaning "essential."

I respectfully agree with the interpretation placed on the word "necessary" in section 15 (1)(k) by Knight J. and in my opinion the plaintiffs have established both as to the facts and as to the law that these premises should be demolished in the interests of town improvement.

It is further argued by the defendants that where the landlord seeks to recover possession under section 15(1)(k) there must be evidence of a scheme made or approved by a local authority affecting the site in relation to other sites. On this point the defendants relied on the case of *Kwek Kim Hoc v. Ong Boon Siong,* [3] where Taylor J. said (at p. 254):—

" In one sense any replacement of a poor building by a better one may be thought an improvement to the town, but in this context the express conveys the idea of town planning. There need not be a general town plan. It might be no more than a building line for one street but there must be a scheme, made or approved by a local authority, affecting the site in relation to other sites."

It is contended by the plaintiffs that the judgment of Taylor J. on this point has not been followed in a number of subsequent cases. It is not necessary for me to decide whether I should or should not follow the judgment of Taylor J. as in this case there is evidence before me that there is a scheme to widen Victoria Street and to provide a 24 ft. service road which affects other sites in that area.

As regards the second ground of the claim for possession namely that part of these buildings are of a temporary character and the site is required for the erection of new buildings, the evidence of the plaintiffs do not satisfy me that part of the buildings is of a temporary character.

In the result there must be judgment for the plaintiffs for possession and *mesne* profits at the rate of $170 per month.

Judgment for the plaintiffs.

Solicitors: *Drew & Napier; K. K. Bezboruah; Murphy, Dunbar & Chung.*

SERANGOON GARDEN ESTATE LTD. v. MARIAN CHYE

[A.C.J. (Chua J.) July 25, 1958]

[Singapore — District Court Appeal No. 13 of 1957]

Contract — Building Contract signed by parties for sale of land and erecting a house — "Special agreement" for installation of Water & Electricity main — Money paid in advance — No misrepresentation — Whether money paid under mistake of law or mistake of fact.

This was an appeal against the judgment of a District Judge who gave judgment for the respondent in the sum of $62.22. The facts were shortly as follows: On or about February 4, 1955 the respondent signed an agreement with the appellants whereby the appellant agreed to sell to the respondent a piece of land and to erect thereon for the respondent a house on the terms and conditions set out in the agreement. At the same time the respondent signed a form (referred to by the appellants as a "special agreement") consenting to a suggestion that the appellants should apply to the City Council for the water and electricity mains to be connected to the house and should pay to the City Council on the respondent's behalf the fees for such connection. On March 11, 1955 at the request of the appellants the respondent deposited with them the sum of $150 to meet the fees payable for the connection to the City Council mains. Subsequently when the respondent received a letter dated July 15, 1955 from the appellants she observed that the sum of $62.22 was shown as having been appropriated to the fee for connection to the City Council water mains.

The respondent brought an action in the District Court claiming the return of the $62.22 from the appellants contending that by the agreement of February 4, 1955 the fee for connection to the City Council water mains was to be borne by the appellants and that the payment to the appellants had been made under a mistake of fact.

The appellants contended before the District Court (a) that the agreement did not provide for the connection of the sanitary fittings of the house to the City Council mains; (b) that the money was paid under a mistake of law; (c) that alternatively the money was paid as a result of a special agreement between the parties.

The learned District Judge held that on the true construction of the agreement the liability for the connection fee laid with the appellants and further held that the money paid by the plaintiff was paid under a mistake of fact and rejected the defence that the money had been paid under the special agreement.

Several points were taken by the appellants in this appeal. The two main points were (1) that the true construction of the agreement is that it is the respondent who should pay the water connection fees and (2) that the money was paid under a mistake of law and is not recoverable.

Held: (1) when document containing contractual terms is signed, then in the absence of fraud, or, misrepresentation, the party signing it is bound, and it is wholly immaterial whether he has read the document or not;

(2) in this case as the respondent has signed the agreement knowing full well that it was a contract for the building of the house the respondent cannot be heard to say that she did not know the terms of the agreement;

(3) the money was paid by the respondent under the belief that it was due under the agreement and it was therefore paid under a mistake of law.

Cases referred to:—

(1) *Ord v. Ord* (1923) 2 K.B. 432.

(2) *Stanley Brothers Ltd. v. Corporation of Nuneaton* 108 L.T.R. 986.

(3) *Curtis v. Chemical Cleaning and Dyeing Co.* (1951) 1 All E.R. 631.

(4) *L'Estrange v. F. Graucob Ltd.* (1934) 2 K.B. 394.

SINGAPORE DISTRICT COURT APPEAL.

C. H. Smith for the appellants.

Tan Peng Khoo for the respondent.

Chua J. (having stated the facts in the terms set out in the head notes above, continued): In the Specification headed "Sanitary Fittings" which is in the Schedule to the Agreement the following appears:

"Each house to be provided with one Belfast Kitchen Sink, one Lavatory Basin or Brackets, one W.C. pan with High Level Cistern. All these fittings will be connected to the water supply and Main Drainage System."

Mr. C. H. Smith, learned Counsel for the appellants, refers the Court to the Municipal (Water Supply) By-Laws, 1949 where it is provided (a) that communication pipes, which include the pipe between the main pipe of the City Council and the consumer's premises, shall be provided and laid by the City Council at the expense of the consumer (By-Law 62 (6)) and (b) that all meters will be supplied and fixed by the City Council and will remain the property of the City Council (By-law 63(1)). Mr. Smith says that these two By-laws show that it is physically impossible for the appellants to lay the communication pipes and contends that the expression in the agreement "all these fittings will be connected to the Water Supply..." means that the fittings will be connected to as far as the water meter as that is as far as the appellants can legally do. I am unable to accept this contention. I think the meaning of "will be connected to the Water Supply....." is clear. It can only mean that the fittings will be connected to the water mains and although the appellants are not permitted under the Water Supply By-laws to lay the communication pipe nevertheless they must bear the cost of the City Council.

The question then arises whether the money paid by the respondent was paid under a mistake of law or under a mistake of fact. Mr. Smith contends that the respondent paid the money because she thought, rightly or wrongly, she had to pay it under the agreement and submits that if a party to a contract misunderstands his rights under it and pays money it is paid under a mistake of law and not of fact and cites as his authority the cases of *Ord v. Ord*; [1] *Stanley Brothers Ltd. v. Corporation of Nuneaton.* [2] Learned Counsel for the respondent, Mr. Tan Peng Khoo, on the other hand, contends that the mistake was a mistake of fact. He points out that from the evidence of the respondent it is clear that the respondent signed the agreement without knowing what its contents were as the respondent does not read English and the contents were not explained to her and she was not given a copy of the agreement and it was not until July 1955 that she was given a copy of the agreement. Mr. Tan says that the respondent was not aware of the clause relating to Sanitary Fittings in the agreement at the time she made the payment of $150, on the 11th March, 1955, to the appellants. So Mr. Tan argues it cannot be said that the respondent made a mistake of law as she did not know the contents of the agreement and he submits that she had made a mistake of fact. Mr. Tan also submits that as the contents of the agreement were not explained to the plaintiff that amounts to a misrepresentation and therefore the agreement was not binding on her he cites as his authority the case of *Curtis v. Chemical Cleaning and Dyeing Co.* [3]

I think it is quite clear that when a party signs a contract knowing it to be a contract which governs the relations between them, then, to use the words of Denning J. in the case of *Curtis v. Chemical Cleaning and Dyeing Co., supra,* "his signature is irrefragable evidence of his assent to the whole contract, including the exempting clauses, unless the signature is shown to be obtained by fraud or misrepresentation." In *L'Estrange v. F. Graucob Ltd.* [4] Scrutton

L.J. said "When a document containing contractual terms is signed, then, in the absence of fraud, or, I will add, misrepresentation, the party signing it is bound, and it is wholly immaterial whether he has read the document or not."

In the present case there is no allegation of fraud but had there been innocent misrepresentation as the agreement had not been explained to the respondents? I do not think so. In *Curtis v. Chemical Cleaning & Dyeing Co. Ltd.* (3) the facts were briefly these: When the plaintiff took a white satin dress to the defendants' shop, dyers and cleaners, to be cleaned she was given a document headed "Receipt" and was asked by the shop assistant to sign it. The plaintiff enquired why her signature was required and she was told by the shop assistant that the defendants would not accept liability for damage done to beads and sequins on the dress. The plaintiff then signed the document without having read all of it. In fact the "Receipt" contained a condition that the cleaners accepted no liability for any damage however arising. When the dress was returned to the plaintiff it was found to be stained and she was awarded damages by the County Court Judge. On appeal it was held that the plaintiff had been induced to sign the document by an innocent misrepresentation as to the extent of the exception clause, the exception never became part of the contract between the parties and therefore the defendants were liable to the plaintiff. Mr. Tan relies on that part of the judgment of Denning L.J. in the *Curtis case* where the learned Judge said that a false impression might even be conveyed by simply handing the document to the customer as if it was a receipt or by asking her to sign it without drawing attention to the condition. It must be remembered that in the *Curtis case* the clause in the "Receipt" exempted the defendants from their common law liabilities. There are no common law liabilities involved in our present case and I do not think that it was necessary for the appellants to draw the attention of the respondent to the terms of the agreement. I do not, therefore, agree with Mr. Tan's submission that there had been an innocent misrepresentation and as the respondent had signed the agreement knowing full well that it was a contract for the building of the house the respondent cannot be heard to say that she did not know the terms of the agreement and in my opinion the money was paid by the respondent under the belief that it was due under the agreement and it was therefore paid under a mistake of law.

Mr. Tan urges that even if the money was paid under a mistake of law it would be inequitable to allow the appellants to retain the money. I do not think however that in this case it would be inequitable to allow the appellants to retain the money. It cannot be said that the appellants have taken advantage of the respondent's ignorance.

For these reasons the appeal is allowed. There will be no order as to costs. The deposit of $500 is to be paid out to the appellants or their solicitors.

Appeal allowed.

Solicitors: *Donaldson & Burkinshaw; Oehlers & Choa.*

A.V. TUCKER v. ANG OON HUE

[O.C.J. (Buttrose J.) October 10, 1957]

[Singapore — Suit No. 690 of 1956]

Negligence — Allurement — Lime left by Contractor on unmade road or thoroughfare used by pedestrians and also by children as a play ground — Contractor not in occupation of land — Child injured by lime — Duty of contractor to child.

The defendant was a building contractor engaged in the construction of a number of houses in Brighton Crescent, Singapore. While so engaged he or his sub-contractor, Ong Ah Sai, left a considerable quantity of lime for the purpose of lime washing and painting houses on an open space which comprised portion of an unmade road or thoroughfare adjoining the houses which were nearing completion. The evidence showed that the place where lime was deposited was freely and frequently used by members of the public and that a number of children were in the habit of playing all over this area. The defendant took no steps to prevent injury to children occurring while work was not going on at the site.

The plaintiff, a boy aged five years, while on the outside of the gate of his house saw two children playing at the lime dump. They were apparently picking up handfuls of lime from the boxes and throwing it from the wooden frames on which they were standing on the ground below and they were still doing so when the plaintiff arrived on the scene. The plaintiff walked up to see what the boys were doing and received a handful of lime in his right eye which had been dropped by one of them. As a result of the injury caused by the lime burn the plaintiff lost the sight of his right eye.

In an action for an injury to the plaintiff caused by the negligence of the defendant.

Held: (1) the defendant was negligent in that he failed to take reasonable care in the circumstances to avoid acts or omissions which could reasonable be fore-